

**REDACTED FOR  
PUBLIC INSPECTION**



In the Matter of )  
 )  
Application by SBC Communications Inc., )  
Southwestern Bell Telephone Company, and )  
Southwestern Bell Communications Services, ) CC Docket No. 01-88  
Inc. d/b/a Southwestern Bell Long Distance for )  
Provision of In-Region, InterLATA Services in )  
Missouri )

**STATE OF MISSOURI**)  
 )  
**COUNTY OF COLE** )

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I, Thomas F. Hughes, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

1. My name is Thomas F. Hughes. My business address is 101 West High Street, Jefferson City, Missouri 65101. I am the Vice President-Regulatory for Southwestern Bell Telephone Company ("SWBT") in Missouri. I am responsible for all Missouri regulatory operations for SWBT, including rate and tariff administration. I also have primary responsibility for interacting with the Missouri Public Service Commission ("MPSC") and its Staff ("Staff"). I filed an affidavit in this docket in support of SBC's application on April 4, 2001.<sup>1</sup>

**PURPOSE OF AFFIDAVIT**

2. The purpose of my affidavit is to respond to comments made by several Competitive Local Exchange Carriers ("CLECs") in this proceeding on April 24, 2001, and by the Department of Justice on May 9, 2001. My affidavit primarily focuses on five areas: 1) the MPSC's review of SWBT's 271 application; 2) the prices contained in the Missouri 271 Agreement ("M2A"); 3) the MPSC's order in the Metropolitan Calling Area ("MCA") docket in Missouri; 4) the status of competition in Missouri; and 5) collocation.

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<sup>1</sup> See Hughes Aff., App. A, Tab 9, CC Docket No. 01-88 (FCC filed Apr. 4, 2001).

### **MPSC'S REVIEW OF SWBT'S 271 APPLICATION**

3. In their comments filed April 24, many of the CLECs criticize the MPSC's review of SWBT's 271 application. See e.g., IONEX at 3, McLeod at 15. The facts, however, do not support the CLECs' rhetoric.

4. The MPSC review of SWBT's 271 application spanned for more than two years.<sup>2</sup> Included in the review process was a lengthy hearing following "contested case" procedures, and a series of hearings akin to a collaborative process in which CLECs were given the opportunity to raise and discuss any issues. Although the MPSC's own review was a more than sufficient basis for its recommendation, the MPSC did not solely rely on its own thorough and complete evaluation, it also included in its final analysis the work conducted by the Texas Public Utilities Commission ("TPUC"), the Kansas Corporation Commission ("KCC"), the Oklahoma Corporation Commission ("OCC"), and Ernst and Young ("E&Y").

5. SWBT initially filed its 271 application with the MPSC in November of 1998. From March 1 through March 9, 1999, the MPSC conducted evidentiary hearings. Numerous parties, many of whom have intervened in this proceeding, participated, including Missouri CLECs, Staff, the Office of Public Counsel, and the Attorney General of the State of Missouri.

6. Following the completion of the evidentiary hearing in March of 1999, the MPSC ordered Staff to submit a report regarding the performance measures to be used by the

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<sup>2</sup> The substantive record of this proceeding, Case No. TO-99-227, was included as Appendix C to SWBT's initial filing.

MPSC in evaluating SWBT's 271 application. In July of 1999, Staff issued its report. The parties commented on Staff's report during the summer of 1999. The MPSC then directed SWBT to hire an outside consultant chosen by the MPSC to perform an evaluation and independent verification of the data submitted by SWBT. In addition, the MPSC sought verification that the Telcordia OSS Test, conducted as part of the Texas proceeding, was sufficient to cover anticipated commercial volumes of Missouri CLEC orders. On January 4, 2000, the MPSC ordered Staff to issue a Request For Proposal ("RFP") to select an independent consultant to perform such a review.

7. Following the submission of bids by several outside consultants, Staff, after careful review, recommended that E&Y be selected to complete the MPSC's review. On July 6, 2000, the MPSC issued an order directing SWBT to enter into an agreement with E&Y. On July 12, 2000, SWBT and E&Y entered into such an agreement. Staff reviewed and approved the agreement prior to its execution. E&Y then began its complete and thorough review of SWBT's data collection processes, and its evaluation of whether those processes accurately captured data for performance monitoring purposes. E&Y also initiated its review of the Telcordia OSS Test.

8. At the same time the MPSC was conducting its review of SWBT's application, the TPUC was in the midst of its own 2+ year review of SWBT's Texas 271 application, which included the review of all of SWBT's market-opening policies, practices, and procedures. The TPUC's review also included a thorough, independent third-party test by Telcordia of SWBT's operational support systems, which are the same SWBT systems

used in Missouri; adoption of clearly delineated performance measures, which were developed in a collaborative process; and implementation of a performance remedy plan with strong financial incentives to prevent “backsliding.” This intense and complete review led to the development of the Texas 271 Agreement (“T2A”).

9. On June 28, 2000, SWBT filed a motion to update the record in Missouri. This update included the filing of an M2A, which was based substantially on the T2A, while incorporating Missouri-specific arbitration results. The offering of an M2A in Missouri by SWBT allowed the MPSC to utilize the fruits of the TPUC’s labor, which concluded with the approval by the Commission on June 30, 2000.

10. Following this update, the MPSC solicited comments from all parties to the proceeding (including CLECs, the Office of Public Counsel, and Staff). The MPSC directed SWBT to respond to these comments. The MPSC then conducted a series of hearings.

11. The stated goal throughout the ensuing hearings was to ensure that the concerns of the CLECs were addressed. When one of the MPSC Commissioners asked a question, all of the CLEC representatives were given an opportunity to respond to the MPSC’s questions. The CLECs were also free to raise any issue during the proceedings. Both the CLEC witnesses and their attorneys were given a virtually unlimited opportunity to raise any matters of concern and SWBT was required to respond.

12. An example of the MPSC's commitment was the end of the hearing on October 11, 2000, when a representative from one of the CLECs was unavailable to attend the hearing the next day. At the end of the first day, this particular representative was allowed to share with the MPSC the remainder of the CLEC's concerns. This type of open proceeding allowed the MPSC to hear and address all of the CLEC's concerns prior to issuing its order recommending approval of SWBT's 271 application. The process utilized by the MPSC did, contrary to the claim made by IONEX (at 3), address all of the issues raised by the CLECs in the March 1999 hearings. The basis of IONEX's contentions is unclear, as it chose not to participate in the hearings conducted in October 2000, November 2000, and January 2001, nor in the briefing processes that accompanied those additional hearings. Had IONEX actually participated, it would have been aware that the open process employed by the MPSC addressed all matters of concern raised by CLECs.

13. In total, the MPSC conducted three additional on the record hearings over a five-day period in October 2000, November 2000, and January 2001. The MPSC also received into the record numerous affidavits, briefs, and summaries filed by the CLECs. The MPSC stated, "[t]he Commission gave each CLEC that chose to participate every opportunity to raise any issue in response to SWBT's request for authority to provide interLATA long-distance services in Missouri."<sup>3</sup>

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<sup>3</sup> Order Finding Compliance with the Requirements of Section 271 of the Telecommunications Act at 3, Application of Southwestern Bell Telephone Company To Provide Notice of Intent To File an Application for Authorization To Provide In-Region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Missouri Public Service Commission, Case No. TO-99-227 (MO PSC Mar. 6, 2001) ("MPSC March 6, 2001 Order") (App. C, Tab 96).



14. As mentioned above, the MPSC utilized the efforts of E&Y to assist in its evaluation of SWBT's application. Under the direction of Staff, E&Y conducted an extensive 12-week review of SWBT's data collection systems. This review totaled over 8000 person hours and culminated in E&Y filing Interim and Final Reports with the MPSC; conducting an on-the-record presentation on November 8, 2000, to respond to any questions that the MPSC and CLECs sought to raise; and conducting a technical workshop with the CLECs on January 30, 2001, to respond to any additional questions raised by the CLECs. The MPSC accepted reports from all of the parties following the Technical Conference. Both the MPSC and the Staff were diligent in ensuring that E&Y responded to all of the questions from the CLECs. In its March 15, 2001 Order, the MPSC stated that "[t]he Commission relies on these reports and the evidence presented to it in its November proceeding in finding that Ernst & Young's analysis was thorough and reliable and that AT&T's concerns regarding the scalability of SWBT's OSS processes to meet capacity demands are unfounded."<sup>4</sup>

15. All of this work conducted by the MPSC, including that which was drawn upon the work conducted by the TPUC and the review of E&Y, would have been more than sufficient for the MPSC to reach its conclusion, but the MPSC did not stop there. It further reviewed the work conducted by the KCC and OCC. Following that review, the

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<sup>4</sup> Order Regarding Recommendation on 271 Application Pursuant to the Telecommunications Act of 1996 and Approving the Missouri Interconnection Agreement (M2A) at 39, Application of Southwestern Bell Telephone Company To Provide Notice of Intent To File an Application for Authorization To Provide In-Region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Missouri Public Service Commission, Case No. TO-99-227 (MO PSC Mar. 15, 2001) (App. C, Tab 98) ("MPSC March 15, 2001 Order").

MPSC determined that SWBT should include in the M2A interim terms and conditions established in Kansas for collocation, and language similar to that contained in the Oklahoma 271 Agreement (“O2A”) for Line Sharing and Line Splitting.

16. Ironically, this determination by the MPSC is now being criticized by the CLECs in their comments. The MPSC made its determination regarding these interim terms and conditions, including prices, in the M2A at the request of the CLECs throughout the Missouri proceeding. In fact, Ms. Michelle Bourianoff, counsel for AT&T, stated during the October 11, 2000, hearing:

[I]n areas where Southwestern Bell changed the M2A from the T2A or areas where the prices are significantly different in Missouri or the terms and conditions are significantly different from Texas concern this Commission based on what the Commission’s hearing from CLECs, I certainly think this Commission has the authority to request that Southwestern Bell make the Texas rates, terms and conditions available in Missouri as a prerequisite to granting 271 relief.

See Hearing Transcript at 2462-3 (Oct. 11, 2000) (App. C, Tab 62).

17. Following this complete and thorough evaluation, the MPSC issued its final order on March 15, 2001. The MPSC stated that “[t]he Commission finds that the M2A complies with the requirements of 47 U.S.C. § 271(c).” MPSC March 15, 2001 Order at 91.

**PRICES CONTAINED IN THE MISSOURI 271 AGREEMENT (M2A)**

18. Despite the claims of most of the CLECs and the Department of Justice (“DOJ”) (see e.g., WorldCom at 4, AT&T at 8, DOJ Evaluation at 10), the MPSC has established permanent rates in the M2A that are based upon the MPSC’s application of the FCC’s TELRIC principles. The MPSC’s foundation for establishing TELRIC-complaint rates stems from Case No. TO-97-40 et. al., in which the MPSC resolved an arbitration proceeding between SWBT, AT&T, and MCI.

19. In that proceeding, the MPSC conducted an evidentiary hearing to review the rates proposed by the parties. As outlined in the reply affidavit of Mr. Alan Kern, representatives of both AT&T and MCI reviewed SWBT’s cost studies during this arbitration proceeding. See also B. Smith Reply Aff. The MPSC initially ordered interim rates in the arbitration. The MPSC then ordered Staff to conduct an extensive 16-week review of the rates and models proposed by SWBT, AT&T, and MCI.

20. As described in detail in the reply affidavit of Ms. Barbara Smith, Staff spent hundreds of hours with SWBT’s cost personnel reviewing SWBT’s cost models and inputs. These are the very same models used by SWBT to develop rates in Texas, Kansas, and Oklahoma. In addition to reviewing the models and inputs, Staff was able to run SWBT’s models. During this same time frame Staff was meeting with AT&T and MCI concerning the AT&T and MCI “Hatfield model” and AT&T’s and MCI’s positions concerning SWBT’s cost model.

21. Following this extensive undertaking, Staff issued a final report to the MPSC that is attached to the MPSC's July 31, 1997, Final Arbitration Order in Case No. TO-97-40.<sup>5</sup> This exhaustive 189-page report detailed all of the findings of Staff and included Staff's recommendation on the various inputs the CLECs are now questioning.

22. In its July 31, 1997, Order, the MPSC established permanent rates in Case No. TO-97-40. The MPSC found:

The process of reviewing the costs, discounts and proposed rates was designed so that Southwestern Bell Telephone Company (SWBT), AT&T Communications of the Southwest, Inc. (AT&T) and MCI Telecommunications Corporation (MCI) could designate the appropriate subject matter expert (SME) or provide documentation in support of its position. As a result, the process led to a remarkable level of open communication and cooperation between SWBT, AT&T, MCI and the Arbitration Advisors. The work which has resulted from this effort consumes several hundred pages and constitutes a thorough and exhaustive review of each and every cost factor which the Commission finds relevant to this arbitration.

See MPSC July 31, 1997 Order at 3.

23. In its final order establishing rates, the MPSC found "that the permanent rates for UNEs, included with this Final Arbitration Order as Attachment B entitled 'Permanent Prices for Unbundled Network Elements,' result in just and reasonable rates." MPSC July 31, 1997 Order at 4. These are the very same rates that SWBT has included in its M2A.

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<sup>5</sup> Final Arbitration Order at Attachment C, AT&T Communications of the Southwest, Inc.'s Petition for Arbitration Pursuant to 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company, Case No. TO-97-40 (MO PSC July 31, 1997) ("MPSC July 31, 1997 Order") (App. G, Tab 11 of our initial application).

24. While SWBT did not agree with the process the MPSC utilized to establish the rates in Case No. TO-97-40 (SWBT was not given the opportunity to express its views on the significant adjustments Staff proposed to the TELRIC studies until after the MPSC made its decision), SWBT nonetheless used the MPSC's findings in Case No. TO-98-115, the second SWBT and AT&T arbitration. In this proceeding, the MPSC ultimately established interim rates. These interim rates are the very rates that are included in the M2A. In establishing the rates as interim, the MPSC applied the FCC's rules concerning TELRIC in the same manner as it had done in Case No. TO-97-40. Many of the rates in Case No. TO-98-115 were set at zero on an interim basis.

25. SWBT ultimately appealed the MPSC decisions in both Case Nos. TO-97-40 and TO-98-115. SWBT claimed that the process utilized by the MPSC in establishing permanent rates violated the Telecommunications Act. SWBT also claimed that, while the MPSC followed TELRIC methodology, it made unlawful adjustments that drove prices below a proper TELRIC rate.

26. In its brief to the Western District Court, AT&T claimed the process utilized by the MPSC did not violate due process, and that the Act required, and certainly permitted, the use of forward-looking costs as implemented by the MPSC. AT&T noted that the MPSC used SWBT's cost studies, and asserted that "to reject SWBT's appeal of this issue, this Court need only conclude that the long-run incremental pricing methodology adopted by the PSC was permissible under the Act's terms and purposes."<sup>6</sup>

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<sup>6</sup> See AT&T's Opposition to SWBT's Motion for Summary Judgement at 20, AT&T Communications of the Southwest, Inc. v. Southwestern Bell Tel. Co., Case No. 97-1573-CV-W-5 (W.D. Mo. filed Nov. 16,

27. SWBT ultimately appealed to the 8th Circuit Court of Appeals. AT&T again asserted that the MPSC followed TELRIC principles in establishing the rates in Case No. TO-97-40. AT&T's brief before the 8th Circuit made it clear that the MPSC based its decision on the FCC's forward-looking pricing methodology rather than on an embedded cost approach. AT&T stated: "Accordingly, the PSC did not violate the law by adhering to the FCC's valid pricing determinations."<sup>7</sup> The 8th Circuit decision itself confirms that the MPSC followed TELRIC, finding that "[t]he PSC's pricing decision that is challenged here was made by reference to the FCC's chosen method of cost-based pricing. The FCC's method is known by its acronym, TELRIC, which stand for total element long run incremental cost."<sup>8</sup>

28. Even during the MPSC's review of SWBT's 271 application, the MPSC received support for its findings in Case No. TO-97-40. When referring to the rates established in Case No. TO-97-40, Mr. Edward Cadieux, Vice President Regulatory and Public Affairs with Gabriel (now NuVox) stated: "But, generally speaking, where the Commission found specific UNE rate values, at least my understanding is that the Commission did that looking at what it considered to be TELRIC studies and arguably made a TELRIC decision." See Hearing Transcript at 2508 (Oct. 12, 2000) (App. C, Tab 63).

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1998) (emphasis in original) (Attachment A, hereto); Pursuant to FED. R. EVID. 201, SWBT respectfully requests that the FCC take judicial notice of all public documents, including AT&T's briefs, on file in the District Court for the Western District of Missouri and the 8th Circuit Court of Appeals resulting from SWBT's appeal of the MPSC's award in TO-97-40.

<sup>7</sup> See Brief for AT&T at 48, Southwestern Bell Tel. Co. v. Missouri PSC, Nos. 99-3833 & 99-3908 (8th Cir. filed Feb. 14, 2000) (Attachment B, hereto).

<sup>8</sup> Southwestern Bell Tel. Co. v. Missouri PSC, 236 F.3d 922, 924 (8th Cir. 2001).

29. The interim rates from Case No. TO-98-115 contain a great number of zero-based rates. In fact, 102 of the 136 interim rates from Case No. TO-98-115 are set at zero even though the MPSC recognized that costs were indeed incurred. These zero-priced interim rates are in addition to the zero-based interim rates for line sharing and loop conditioning that are contained in the M2A. The interim collocation rates were set at Texas levels, and SWBT has consistently maintained that this level was insufficient to cover SWBT's costs. Clearly the CLECs will benefit from these interim rates, and it is SWBT that has the financial risk. Based upon these advantageous rates, it is no wonder El Paso Networks, LLC and PacWest Telecom, Inc. ("El Paso/PacWest") made the following statement in their Brief (at iii) in this proceeding: "This is not to say that voluntary rate reductions and use of advantageous interim prices should not be encouraged."

30. Many of the CLECs criticize the interim rates established by the MPSC in Case No. TO-98-115. They claim the MPSC has not demonstrated a commitment to establishing TELRIC-based rates. This is a fact that was rebutted by the 8th Circuit's order noted above.

31. The CLECs also discuss the fact that the rates from Case No. TO-98-115 have been interim for over two years. Yet when SWBT proposed a procedural schedule that called for the MPSC to conduct hearings in July of 2001 in Case No. TO-2001-438 (The Determination of Prices, Terms, and Conditions of Certain Unbundled Network Elements), the case where the MPSC will make those rates permanent, the CLECs

opposed the schedule. Rather, they suggested a procedural schedule that called for the MPSC to conduct a hearing some four months later, or nearly nine months following the MPSC's approval of the M2A. The intent of the CLECs is clear – the CLECs want SWBT to bear the financial harm by receiving zero-based interim rates on many UNEs for a period in excess of the ordered six-month true-up period. Over SWBT's strong objections, the MPSC approved the procedural schedule the CLECs sought, virtually ensuring that SWBT will bear the financial risk from providing zero-based interim rates beyond the six-month true-up period.

32. The CLECs also attempt to cloud SWBT's commitment to the rates established by the MPSC in Case No. TO-97-40 by citing the case pending before the Supreme Court regarding TELRIC principles. SWBT's commitment to the M2A is the same as the commitment it made in the T2A, K2A, and O2A. SWBT will abide by the permanent rates as outlined in the respective X2As for at least a period of 2 years for business customers and 3 years for residential customers, even if the Supreme Court rejects the FCC's TELRIC rules.

33. In discussing this pending Supreme Court case with the MPSC, Mr. Carl Lumley, counsel representing Gabriel (now NuVox), WorldCom, Mpower, and ASCENT stated during the hearing on January 31, 2001:

[T]he FCC has made it clear in the Oklahoma/Kansas decision that they are going to continue to apply their interpretation of TELRIC to 271 cases until the Supreme Court tells them otherwise. So with that in mind, I think we need to understand, since the FCC is going to be making the final decision here, that that's the rules that they are saying they are going to play by, and it wouldn't make much



sense for the rest of us to try to play by another set of rules at this time, at least. Having said that, I think that the Commission is taking the right approach in general with regard to the rates as stated in the preliminary comments. We would – we would still believe that the – the option of combining Missouri rates with Texas rates is still available to you for the reason I've stated, that even though this uncertainty has been introduced, it is an uncertainty that already existed, and the FCC basically appears to be overlooking it for the time being. And we believe that they would – would view the process that the Missouri Commission has gone through with regard to certain rates the same way that it viewed the process that happened in Oklahoma and Kansas, and that is they – you know, they were very favorable in terms of the effort that was expended in each of those states looking at rates. So we think your concerns are well focused on the rates that have not yet been reviewed in finding a solution for that.

See Hearing Transcript at 3146-7 (Jan. 31, 2001) (App. C, Tab 83).

34. It was appropriate for the MPSC to utilize rates established in Case No. TO-97-40. These permanent prices that the MPSC set have been found by the MPSC and the 8th Circuit to comply with TELRIC principles. SWBT established prices in Missouri following the same methodology that was followed in Kansas and Oklahoma. In both cases, even though the Texas 271 recommendation had been issued and the 8th Circuit decision in Iowa Utilities Board had been released, the FCC reviewed the Oklahoma and Kansas rates and found that they were consistent with TELRIC and approved those applications.

35. In an effort to encourage a timely true up, the MPSC determined that the interim rates contained in the M2A should be subject to only a six-month true-up period. The MPSC stated in the MPSC March 15, 2001 Order (at 35) that:

The interim rates contained in the M2A are subject to a limited true-up. The Commission has four cases pending to determine

permanent prices, terms, and conditions for the interim prices subject to true-up in the M2A. Because of the concern of the lack of certainty for the CLECs to establish a business plan, the Commission finds that a limited true-up period is reasonable. Therefore, the Commission determines that a true-up period that is six months retrospectively from the date of the Commission's order establishing a permanent rate is appropriate. The true-up period that has been included in the M2A is consistent with these Commission findings.

At the hearing, no CLEC objected to a limited true-up, presumably because a limited true-up is likely to be in the CLEC's financial interest since many of the interim rates are set at zero.

36. Sprint (at 4) in its comments discusses the FCC's previous orders in which the applicant sought 271 approval under a proposed agreement, which contained interim rates. In particular, Sprint cites a three-prong test: 1) the rates must be reasonable under the circumstances, 2) the state commission has demonstrated its commitment to the FCC's pricing rules, and 3) a provision is made for refund or true-up once permanent rates are set.

37. The rates contained in the M2A meet this test. 1) The rates contained in the approved M2A are clearly reasonable. The rates from Case No. TO-97-40 were found by the MPSC to be TELRIC-compliant. The rates the MPSC ordered as interim are the very rates the CLECs requested the MPSC make interim in the M2A. These rates are also beneficial to the CLECs since many of them are zero based. 2) As noted previously, many of the CLECs criticizing the MPSC in this proceeding have agreed the MPSC established TELRIC-based rates in Case No. TO-97-40. In addition, the 8th Circuit found that the MPSC followed the FCC's TELRIC principles. 3) It was the CLECs who

during the MPSC's review of SWBT's 271 application endorsed the OCC's decision to limit the time frame for true-up when the OCC approved interim rates in the O2A. This is no surprise since many of the interim rates contained the M2A approved by the MPSC are zero based. The M2A contains a six-month retroactive true up provision for all interim rates. A MPSC final order establishing permanent rates will be applied retroactively for the six months immediately preceding the order.

38. It is clear the MPSC has previously established TELRIC-based rates judging by its application of the FCC's pricing guidelines. For those interim rates included in the M2A the MPSC repeatedly stated its intent to "expeditiously" establish permanent rates in the four dockets it has opened (e.g., see MPSC March 15, 2001 Order at 6, 18). The MPSC has now established the very procedural schedule sought by the CLECs, despite SWBT's strong recommendation that even more expeditious hearings be set.

39. For all of the foregoing reasons as well as those outlined in the initial affidavit and reply affidavit of Ms. Barbara Smith, the FCC should approve the rates approved by the MPSC in the M2A.

#### **MPSC'S ORDER IN THE METROPOLITAN CALLING AREA DOCKET**

40. McLeodUSA, Inc. (McLeod) attempts to use a Missouri docket, in which the MPSC determined the terms and conditions governing CLEC participation in a MPSC-mandated expanded local calling plan called MCA service, to suggest that SWBT was somehow engaged in anticompetitive conduct and, therefore, SBC's application should

be denied.<sup>9</sup> However, McLeod's allegations regarding both SWBT's and the MPSC's actions are misleading and erroneous. While I will not attempt to recreate the record in that case, I must clear up several inaccuracies asserted by McLeod.

41. The case referenced by McLeod examined how CLECs were going to participate in the MCA plan. In fact, the case was captioned, "An Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996." This was a case to determine, among other issues, the terms and conditions by which CLECs were to participate in the MCA plan.

42. The MCA plan was initially created by the MPSC in a case which predated passage of the Telecommunications Act.<sup>10</sup> The MCA plan was implemented in 1993. The MCA plan provided for expanded local calling in St. Louis, Kansas City, and Springfield, which are Missouri's most populous areas. The MCA plan, as ordered by the MPSC, had a prescribed calling scope, prescribed pricing levels that were consistent among the Incumbent Local Exchange Carriers ("ILECs") required to provide the service, a prescribed bill-and-keep arrangement in lieu of any intercompany compensation, and required the use of specially identified NPA-NXXs that permitted MCA calls to be locally dialed. Thus, the MCA plan had a set of MPSC-prescribed rules or terms and conditions that the ILECs who were ordered to provide it had to abide by.

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<sup>9</sup> Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996, Case No. TO-99-483 (MO PSC).

43. The MCA calling scope, as prescribed by the MPSC, is somewhat unique and can be difficult to understand. In general terms, each metropolitan area includes a mandatory zone in which all customers subscribe to MCA as part of basic local service rates, and optional areas or tiers where customers can pay an additional fee for expanded local calling. In certain instances, the calling scope of an MCA subscriber provides for local calling to all other customers in a certain area regardless of whether or not the called party has subscribed to MCA service. In other cases, the calling scope only permits local calling to other customers who have subscribed to the Commission-mandated MCA service (i.e., “MCA subscribers”). In general, MCA subscribers can call all customers in the mandatory zone and lower optional tiers while calls to outer tiers are limited to other MCA subscribers.

44. Since the local calling scope of an MCA subscriber includes local calling to other MCA subscribers, the MCA Plan uses dedicated NPA-NXX codes to identify MCA subscribers. This allows the network to identify whether a called party is an MCA subscriber and, thus, whether or not the call should be permitted to be locally dialed.

45. McLeod’s use of the term “screening” is an attempt by McLeod to suggest that SWBT was doing something inappropriate with its switch translations. See McLeod at 4. Its allegation simply is not true. SWBT, like other LECs, programs its switches to translate calls as either local or toll. When a SWBT MCA subscriber makes a call within

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<sup>10</sup> See Report and Order, Establishment of a Plan for Expanded Calling Scopes in Metropolitan and Outside Exchanges, Case No. TO-92-306 (MO PSC Dec. 23, 1992) (“MPSC Dec. 23, 1992 Report and Order”).

the MCA area, the switch must be programmed to determine whether or not the call should be locally dialed. Depending on where the MCA subscriber is calling to, it may only be a local call for the MCA subscriber to call other MCA subscribers. Thus, if the MCA subscriber is calling another party who does not subscribe to MCA service, the call may be outside the local calling scope of the MCA subscriber and therefore must be dialed as a toll call. Because the MPSC had not yet determined the terms of CLEC participation in the MCA plan (e.g., prescribed pricing, prescribed calling scope, prescribed bill-and-keep arrangement, and dedicated NPA-NXX codes), CLEC customers were not MCA subscribers. Therefore, certain calls to CLEC customers, just like certain calls to SWBT's and the other LECs' non-MCA subscribers, were outside the local calling scope of the MCA subscriber. In other words, SWBT and other ILECs ordered to provide MCA service treated CLEC customers in the same manner as they treated their own and each other's non-MCA subscribers.

46. McLeod is attempting to mislead the Commission on this matter, claiming that the dispute was solely between SWBT and the CLECs. That is incorrect. The evidentiary hearing conducted by the MPSC stemmed from a jointly filed application by two incumbent LECs operating in Missouri, MoKan Dial, Inc. and Choctaw Telephone Company, to determine certain aspects surrounding continued provisioning of MCA service. These incumbent LECs were not sure if the CLECs were participants in the MPSC's mandated plan, and sought clarification on how to treat calls to CLECs. All of the incumbent LECs that were providing MCA service – not just SWBT – were involved in the proceeding to address CLEC participation in the MCA plan.

47. In the MCA case before the MPSC, the debate centered on how the CLECs were going to participate in the MCA plan – in other words, the terms and conditions by which the CLECs were going to have to abide in order to be considered MCA providers with MCA subscribers. CLECs sought to be able to pick and choose which of the existing terms and conditions of the MCA they would follow. Since the existing ILECs were ordered to provide MCA service under a specific set of rules (e.g., prescribed prices, prescribed calling scopes, a prescribed bill-and-keep intercompany compensation arrangement, and dedicated NPA-NXX codes), the MPSC established a proceeding to determine if these terms and conditions would also apply to the CLECs. SWBT supported CLEC participation in the MCA plan and suggested that all providers should participate in the MCA plan under the same terms and conditions. The MPSC ultimately found “that CLECs should be allowed to participate in MCA service on a voluntary basis under the same terms and conditions that were ordered by the Commission for the Incumbent Local Exchange Carriers (ILECs) in Case No. TO-92-306 with the exception of pricing.”<sup>11</sup> Prior to the September 7, 2000 Order, the MPSC had never determined that CLECs should be permitted to participate in the MCA Plan, nor had it made any determination that the CLECs could pick and choose which of the terms and conditions of the plan to follow.

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<sup>11</sup> Report and Order at 18-19, Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996, Case No. TO-99-483 (MO PSC Sept. 7, 2000) (“MPSC Sept. 7, 2000 Report and Order”) (App. G, Tab 74 of our initial application).

48. In spite of McLeod's misleading characterizations regarding SWBT's and the MPSC's actions, McLeod was really only interested in receiving the benefits of the MCA plan (i.e., the ability for McLeod's customers to be locally called by SWBT and other LEC customers on an expanded local calling basis) without actually complying with the terms and conditions ordered by the MPSC for participation in the MCA plan (e.g., prescribed and consistent pricing to minimize customer complaints, prescribed calling scopes to minimize customer confusion, a prescribed bill-and-keep intercompany compensation arrangement to ensure the financial viability of the MCA plan, and the use of dedicated NPA-NXX codes to correctly administer the calling scope).

49. The suggestion that SWBT's and the MPSC's actions thwarted competition is equally misleading. See McLeod at 6. As is common, competition in Missouri began in the large metropolitan areas of the state. It is in these large metropolitan areas of St. Louis, Kansas City, and Springfield, Missouri where MCA service is mandatory. That is, all customers in the mandatory area can call all other customers in the mandatory area. There are no calling scope issues relative to whether or not a customer is an "MCA subscriber." Therefore, all calls within the mandatory area, including calls from SWBT customers to CLEC customers, were always considered local calls. Numerous CLECs began providing service in these metropolitan areas and there were no MCA calling scope issues. It wasn't until some of the CLECs expanded their service to the suburban and more rural markets where MCA service is optional that the determination of whether or not a customer is an "MCA subscriber" for calling scope purposes became an issue for CLECs like McLeod. To address the issue, the MPSC initiated a docket to resolve the



terms and conditions of such participation. The MPSC then proceeded through the docket which, as described above, resulted in a determination that CLECs could be MCA providers and therefore, could have MCA subscribers for MCA calling scope purposes. At that point in time, SWBT, and the other ILECs who were required to provide MCA service, expediently changed their switch translations to include those customers designated by CLECs like McLeod as "MCA subscribers" in the local calling scopes of other MCA subscribers. Since the MPSC's order in this proceeding, SWBT is aware of no CLEC complaints with respect to SWBT's MCA subscribers' ability to locally call other CLECs' MCA subscribers.

50. While, unfortunately, McLeod attempts to mislead the Commission through its mischaracterization of the MCA docket, the bottom line is that the MPSC was faced with the need to clarify how a previous MPSC-mandated plan, developed prior to CLEC competitive entry, was going to be modified to operate in a competitive environment. The MPSC appropriately conducted a proceeding on the relevant issues and took definitive action to modify the MCA plan so that it can function in a competitive environment. SWBT was in compliance with the previous MPSC order establishing the MCA calling scopes<sup>12</sup> and it is now in compliance with the new MPSC order<sup>13</sup> determining that, under a specified set of terms and conditions, certain CLEC customers should also be considered MCA subscribers for MCA calling scope purposes. McLeod's erroneous allegations and mischaracterizations are not relevant to this Commission's evaluation of SBC's application.

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<sup>12</sup> See MPSC Dec. 23, 1992 Report and Order.

<sup>13</sup> See MPSC Sept. 7, 2000 Report and Order.

51. McLeod also discusses the voluntary agreement reached between SWBT and Intermedia. As noted in the interconnection agreements, each party is free to select the calling scope of its end users. The agreement between SWBT and Intermedia provided for SWBT to forego otherwise applicable toll charges to SWBT's own customers in exchange for compensation from Intermedia. SWBT made this agreement available to all CLECs via an accessible letter issued in December 1999. McLeod inappropriately attempts to state that this voluntary agreement between SWBT and Intermedia constitutes a violation of checklist item 13 – reciprocal compensation. This is simply false. While this arrangement was available to other CLECs, those CLECs were not obligated to agree to a similar arrangement. As outlined in the initial affidavit filed by Ms. Rebecca Sparks in this proceeding, SWBT is in full compliance with checklist item 13.<sup>14</sup>

52. McLeod attempted to raise many of these same issues during the MPSC's review of SWBT's 271 application. During the hearing on October 11, 2000, Commissioner Murray responded to McLeod's inaccurate claims, "As far as MCA in that we did have a proceeding on that and this Commission made a determination and there was no finding that there was any improper activity on the part of Southwestern Bell." See Hearing Transcript at 2282 (Oct. 11, 2000).

53. The MPSC also addressed this matter in its September 2000 MCA Order. The MPSC stated, "This case was established to determine the status of the MCA service

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<sup>14</sup> See Sparks Aff., App. A, Tab 11, CC Docket No. 01-88 (FCC filed Apr. 4, 2001).

from this point forward and therefore any damages sustained by what the CLECs allege was illegal action by the ILECs is more properly raised in a complaint case.” MPSC September 7, 2000 Order at 18. Since the issuance of that order no CLEC has filed a complaint against SWBT claiming illegal action or seeking damages. Subsequently, AT&T voluntarily withdrew its complaint which had been filed prior to the issuance of the MPSC’s MCA order.

### **STATUS OF COMPETITION IN MISSOURI**

54. It is unbelievable that the CLECs continue to claim there is no competition in the state of Missouri. The facts again do not support their rhetoric.

55. As outlined in the reply affidavit of Mr. David Tebeau, the level of CLEC market share in Missouri was between 9.2 percent and 14.2 percent at the end of February 2001. The 9.2 percent details the minimum level of lines served by the CLECs in Missouri. This summary total includes resold lines, UNE-Platforms (loop/port combos), and E-911 listings reported to SWBT by the CLECs. Further, the MPSC, in its order recommending approval of SWBT’s entry into the Missouri long-distance market, found that, based on its Staff’s solicitation of information from Missouri CLECs, 12 percent of access lines in SWBT’s Missouri territory were served by CLECs. These facts demonstrate that AT&T’s claim that only 0.30 percent of the Missouri local exchange market are currently served by CLECs is simply false.<sup>15</sup>

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<sup>15</sup> AT&T’s Direct Testimony of Steven Turner at 5 (AT&T Comments, Attachment 2).

56. These facts also show that Mr. Turner's claim, that "**100 percent** of the supposed access line loses [sic] alleged by SWBT are mere estimates based largely on inappropriately converting *all* interconnection trunks into access line equivalents," is erroneous. See AT&T's Direct Testimony of Steven Turner at 13 (emphasis in original). The 9.2 percent of lines served by CLECs does not even take interconnection trunks into account. Mr. Turner made similar claims in the MPSC proceeding examining SWBT's entry into the long-distance market, and those claims were not accepted by the MPSC.

57. The 9.2 percent is clearly the most conservative level of lines served by the CLECs in the state of Missouri. As stated by Mr. Turner, E-911 listings are typically underreported by the CLECs. See AT&T's Direct Testimony of Steven Turner at 16-17.

58. Based on data collected from CLECs, Staff estimates that CLECs serve approximately 12 percent of access lines in SWBT territory. See Hearing Transcript at 3097-99 (Nov. 9, 2000) (App. C, Tab 72).

59. The CLECs erroneously claim that they are not able to compete in Missouri via the purchase of unbundled network elements. As outlined in the reply affidavit of Ms. Rebecca Sparks, this is simply not the case. If there is any limitation to competition in Missouri, it may be solely attributable to a CLEC's own business plan. CLECs have found the lucrative business market in Missouri to be open to competition. Many are choosing to focus only on those customers who can bring the highest margins to their business.

60. As Ms. Rebecca Sparks notes in her reply affidavit, the UNE-P rates in Missouri are comparable to the rates approved by the Commission in the O2A, and *lower* than the UNE-P rates approved by the Commission in New York and Massachusetts. In addition, as Ms. Rebecca Sparks also notes, the UNE-P rates in Missouri represent a substantial discount off of SWBT's retail rates even *without* considering the revenue a CLEC would receive from the toll and access services it provides its customers.

61. CLECs that are interested in competing in the marketplace, and not in the regulatory arena, are serving customers in Missouri. In fact, Birch recently announced that it would be providing service to residential customers in Missouri via unbundled network elements. See Tebeau Reply Aff.

62. The CLECs also claim that there is no residential competition in the state of Missouri. This rhetoric is not true. As outlined in Mr. Tebeau's reply affidavit, CLECs are serving residential customers in Missouri via all three methods, that is, resale, the purchase of UNEs, and pure facilities-based. The MPSC concluded "that facilities-based local competition exists in Missouri for both business and residential customers." See MPSC March 15, 2001 Order at 91.

### **COLLOCATION**

63. CLECs, including McLeod (at 19) and El Paso/PacWest (at 8), continue to attempt to mislead the Commission regarding the status of collocation in Missouri. As is

outlined in the initial affidavit of Mr. Tebeau,<sup>16</sup> operational collocation arrangements grew in Missouri by 562 (or 472 percent) from July 2000 to February 2001. This exponential growth clearly dismisses any claim that the CLECs are not able to secure collocation arrangements in Missouri.

64. Further, SWBT has fully complied with the MPSC's order in Case No. TO-97-40 which established pricing and intervals for collocation arrangements. See MPSC Dec. 11, 1996 Order (App. G, Tab 9). Over the past four years, during which collocation has been provisioned on an ICB basis in Missouri, there have been no formal complaints filed by any CLEC relating to a collocation price quote in Missouri.

65. The MPSC opened a proceeding to establish permanent rates, terms, and conditions for collocation. The parties have reached a stipulation and agreement on the terms and conditions to be included in the collocation tariff in Missouri. The matter pending now before the MPSC is pricing. On an interim basis under the M2A, pricing is set at the Texas collocation rates.

### **CONCLUSION**

66. The rhetoric of the CLECs does not ring true when the facts in this proceeding are brought to light. The MPSC conducted a completed and thorough review of SWBT's 271 application. Its work included the review of the records from Texas, Kansas, and Oklahoma as well as the hiring of an independent consultant to assist in its efforts. The

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<sup>16</sup> See Tebeau Aff. ¶ 7, App. A, Tab 1, CC Docket No. 01-88 (FCC filed Apr. 4, 2001).

MPSC has a history of establishing rates based upon its application of the FCC's TELRIC principles. This fact is cemented by the findings of the 8th Circuit. The claims of improper conduct by McLeod regarding the MCA proceeding are meritless. And CLECs that so desire have found the markets in Missouri to be fully open to competition. The CLECs are merely attempting to keep the consumers of Missouri from the full benefits of SBC's simple, easy to understand long-distance calling plans.

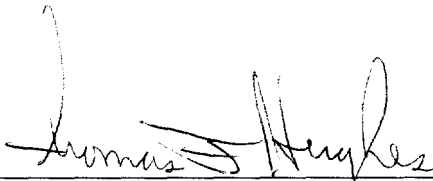
67. The MPSC's March 15, 2001 Order summed up this proceeding best at page 91:

Based on the extensive record in this case, the availability of the M2A to Missouri CLECs, and the Commission's intention to expeditiously determine permanent rates, terms, and conditions for collocation, line sharing, line splitting, loop conditioning, and unbundled network elements, the Commission concludes that facilities-based local competition exists in Missouri for both business and residential customers; that SWBT is providing competing carriers with all of the requisite checklist items in a nondiscriminatory fashion; and that SWBT's entry into the Missouri long-distance market is in the public interest. In addition, the Commission finds that the M2A complies with the requirements of 47 U.S.C. § 271(c). The Commission recommends that the FCC grant SWBT's Application for authorization to provide in-region, interLATA services in the state of Missouri.

This concludes my affidavit.

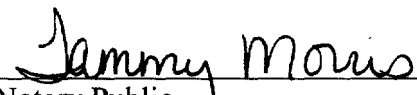
The information contained in this affidavit is true and correct to the best of my knowledge and belief.

Executed on May 11, 2001.

  
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Thomas F. Hughes  
Vice President - Regulatory

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF COLE     )

Subscribed and sworn to before me this 11<sup>th</sup> day of May, 2001.

  
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Notary Public

TAMMY R MORRIS  
NOTARY PUBLIC STATE OF MISSOURI  
COLE COUNTY  
MY COMMISSION EXP. APR. 4, 2004